

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAUL OLIVAS,

Plaintiff,

v.

GOLDER 1 CU, et al.,

Defendants.

No. 2:22-cv-01243-DJC-CKD

ORDER

Defendant Trans Union, LLC ("Trans Union") moves for judgment on the pleadings as to Plaintiff Raul Olivas's claims that they are inaccurately reporting the pay status of a closed mortgage account on his credit report as currently "60 Days Past Due." Trans Union argues their reporting is accurate as a matter of law because the account was 60 days past due at the time it was closed in December 2018, and the report reflects that this was the historical, not current, pay status.

Having considered the Parties' briefing and arguments, the Court agrees with Trans Union, and will GRANT judgment in Trans Union's favor on Plaintiff's claims.

BACKGROUND

In 2018, Plaintiff had a mortgage account ("Account") serviced by Golden 1 Credit Union. (Compl. (ECF No. 1-3) ¶ 5.) In December 2018, the Account was paid in full and closed with a \$0 balance. (*Id.* ¶¶ 6-7.) At the time the Account was closed, it

1 was reporting as 60 days past due. (*Id.* ¶ 8.) Plaintiff alleges that, “[d]espite the debt
2 being paid in full, Golden 1 has been reporting to TransUnion and Equifax that
3 Plaintiff’s payment status is currently late by greater than 60 days throughout 2020 and
4 2021.” (*Id.*)

5 On or about October 2020, Plaintiff sent a dispute letter to Trans Union
6 disputing the pay status on the Account. (*Id.* ¶ 12.) In response, Trans Union notified
7 Golden 1 Credit Union, who advised Trans Union to continue reporting the pay status
8 of the Account as 60 days past due. (*Id.* ¶¶ 13-14.) Trans Union has continued to do
9 so. (*Id.* ¶ 15; see also Roberts Decl. (ECF No. 19-2), Ex. A.)

10 Based on these allegations, Plaintiff claims that Trans Union negligently and
11 willfully violated the Fair Credit Reporting Act (“FCRA”) by failing to ensure the
12 accuracy of the information it reported under 15 U.S.C. § 1681e(b), and by failing to
13 conduct a reasonable investigation once Plaintiff brought inaccuracies to its attention
14 under 15 U.S.C. § 1681i. (Compl. ¶¶ 29-35.) Plaintiff also claims Trans Union violated
15 California’s corollary to the FCRA, the Consumer Credit Reporting Agencies Act
16 (“CCRAA”), Cal. Civ. Code §1785.1 *et seq.* (*Id.* ¶¶ 51-56.)

17 Trans Union brought this Motion for Judgment on the Pleadings on July 24,
18 2024, seeking dismissal of all claims against them. (Mot. J. Pleadings (ECF No. 19).)
19 The Court held a hearing on October 3, 2024, with Robert Sibilia appearing for
20 Plaintiff, and Jason Roberts appearing for Trans Union. The Court took the matter
21 under submission.

22 **LEGAL STANDARD**

23 Rule 12(c) of the Federal Rules of Civil Procedure provides that “[a]fter the
24 pleadings are closed—but early enough not to delay trial—a party may move for
25 judgment on the pleadings.” Fed. R. Civ. P. 12(c). The same legal standard applicable
26 to a Rule 12(b)(6) motion applies to a Rule 12(c) motion. *Dworkin v. Hustler Mag., Inc.*,
27 867 F.2d 1188, 1192 (9th Cir. 1989). Accordingly, the allegations of the non-moving
28 party must be accepted as true, while any allegations made by the moving party that

1 have been denied or contradicted are assumed to be false. *MacDonald v. Grace*
 2 *Church Seattle*, 457 F.3d 1079, 1081 (9th Cir. 2006). The facts are viewed in the light
 3 most favorable to the non-moving party and all reasonable inferences are drawn in
 4 favor of that party. *Living Designs, Inc. v. E.I. DuPont de Nemours & Co.*, 431 F.3d 353,
 5 360 (9th Cir. 2005). “[J]udgment on the pleadings is properly granted when, taking all
 6 the allegations in the non-moving party’s pleadings as true, the moving party is
 7 entitled to judgment as a matter of law.” *Marshall Naify Revocable Tr. v. United States*,
 8 672 F.3d 620, 623 (9th Cir. 2012) (quoting *Fajardo v. County of Los Angeles*, 179 F.3d
 9 698, 699 (9th Cir. 1999)).

10 If the Court “goes beyond the pleadings to resolve an issue,” a judgment on the
 11 pleadings is not appropriate and “such a proceeding must properly be treated as a
 12 motion for summary judgment.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896
 13 F.2d 1542, 1550 (9th Cir. 1989); Fed. R. Civ. P. 12(d). However, a district court may
 14 “consider certain materials—documents attached to the complaint, documents
 15 incorporated by reference in the complaint, or matters of judicial notice—without
 16 converting the motion . . . into a motion for summary judgment.” *United States v.*
 17 *Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). Courts have discretion in appropriate cases
 18 to grant a Rule 12(c) motion with leave to amend, or to simply grant dismissal of the
 19 action instead of entry of judgment. See *Lonberg v. City of Riverside*, 300 F. Supp. 2d
 20 942, 945 (C.D. Cal. 2004).

21 **DISCUSSION**

22 The FCRA was enacted in order to ensure fair and accurate credit reporting.
 23 *Shaw v. Experian Info. Sols. Inc.*, 891 F.3d 749, 755 (9th Cir. 2018). To assert a claim
 24 under sections 1681e(b) or 1681i of the FCRA—alleging either that a consumer credit
 25 report is inaccurate or that a credit reporting agency did not conduct a proper
 26 reinvestigation to determine whether the disputed information is inaccurate—a plaintiff
 27 must plead the existence of a factual inaccuracy within their report. See *Guimond v.*
 28 *Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995); *Carvalho v. Equifax*

1 *Info. Servs., LLC*, 629 F.3d 876, 890 (9th Cir. 2010). Information in a credit report is
2 inaccurate if it is “patently incorrect, or because it is misleading in such a way and to
3 such an extent that it can be expected to adversely affect credit decisions.” *Carvalho*,
4 629 at 890-91. “[I]nformation is only materially misleading when it is ‘open to an
5 interpretation that is directly contradictory to the true information.’” *Sanchez v.*
6 *JPMorgan Chase Bank NA*, 643 F. Supp. 3d 1025, 1033 (D. Ariz. 2022) (quoting *Gross*
7 *v. Private Nat’l Mortg. Acceptance Co., LLC*, 512 F. Supp. 3d 423, 427 (E.D.N.Y. 2021)).

8 Similarly, inaccuracy is a required element for a CCRAA claim as the statutory
9 language requires that the information reported be “incomplete or inaccurate.” Cal.
10 Civ. Code § 1785.25(a). In general, the CCRAA “mirrors” the FCRA, such that a
11 CCRAA claim survives only to the extent that a FCRA claim survives. See *Guimond*, 45
12 F.3d at 1335; *Olson v. Six Rivers Nat’l Bank*, 111 Cal. App. 4th 1, 12 (2003).

13 Plaintiff alleges Trans Union reported an inaccuracy on his credit report
14 because they reported that his Account was currently “60 Days Past Due” even after
15 the Account was paid off and closed in December 2018. (Compl. ¶¶ 5-16.) Plaintiff
16 alleges this inaccuracy will cause him to have a lower credit score, thereby hurting his
17 creditworthiness and ability to obtain credit. (*Id.* ¶¶ 10-11, 16.)

18 Trans Union argues that Plaintiff has failed to plead any factual inaccuracy in his
19 credit report because the Account was 60 days past due at the time it was closed in
20 December 2018, and it is clear from the credit report that this was the historical, not
21 current, pay status on the Account. (Mot. J. Pleadings at 4-9.) Trans Union argues
22 numerous other courts have examined nearly identical allegations and have
23 concluded that reporting a historical pay status on a closed account with a \$0 balance
24 is not inaccurate or misleading. (*Id.* at 9-12.) Thus, Trans Union urges the Court to
25 dismiss Plaintiff’s claims. (*Id.* at 12.)

26 The Court finds that Plaintiff has failed to plead any inaccuracy in his credit
27 report. To state a claim under the FCRA, a plaintiff must show an inaccuracy in their
28 credit report that is “patently incorrect or materially misleading.” *Zavala v. Trans*

1 *Union, LLC*, No. 2:20-cv-02276-TLN-DB, 2023 WL 6387220, at *2 (E.D. Cal. Sept. 29,
2 2023). To evaluate whether information in a report is patently incorrect or materially
3 misleading, courts consider the report in its entirety. See *Sanchez*, 643 F. Supp. 3d at
4 1033-34 (collecting cases supporting the proposition that “the Court must view the
5 report as a whole” to determine whether information is inaccurate or misleading).

6 Here, Trans Union provides a copy of the investigation report it sent to Plaintiff
7 on October 16, 2020, in response to his letter disputing the pay status on the
8 Account.¹ (See Roberts Decl., Ex. A.) Therein, Trans Union confirmed that Plaintiff’s
9 credit report shows the Account balance as \$0. (*Id.*) The credit report also shows the
10 last update to the Account was on December 28, 2018, at which point the pay status
11 was “Account 60 Days Past Due Date,” and that the Account was closed on December
12 28, 2018, following the last payment received that same day. (*Id.*) Further, the credit
13 report includes a notation that the Account had a “Maximum Delinquency of 60 days
14 in 12/2018.” (*Id.*)

15 Viewing these facts as a whole, the Court finds that no reasonable reader of
16 Plaintiff’s credit report could interpret the “60 Days Past Due” pay status as being
17 reflective of the Account’s *current* status given that the Account was closed on
18 December 28, 2018, with a \$0 balance and a remark that the Account had a maximum
19 delinquency of 60 days in 2018. These details clearly show that the Account is closed
20 and paid off, with no amount currently due. This conclusion is supported by the
21 weight of case law in this circuit. See, e.g., *Sanchez*, 643 F. Supp. 3d at 1036
22 (concluding a pay status of “Account 120 Days Past Due Date” on plaintiff’s credit
23 report was neither patently inaccurate nor materially misleading when her report
24 showed the account’s balance was zero, the last payment was made in September
25 2018, the account was closed in 2018, and nowhere did the report state that it was
26

27 ¹ Exhibit A to the Roberts Declaration is incorporated by reference in the Complaint. Thus, the Court
28 may take note of its contents without the need to convert this Motion into a Motion for Summary
Judgment. See *Al- Ahmed v. Twitter, Inc.*, 603 F. Supp. 3d 857, 866 (N.D. Cal. 2022).

1 reporting a “current” pay status); see also *Cassity v. TransUnion, LLC*, No. 6:20-cv-
2 02139-MK, 2021 WL 4166340, at *3-4 (D. Or. July 26, 2021), *report and*
3 *recommendation adopted*, 2021 WL 4166323 (D. Or. Sept. 13, 2021) (dismissing
4 plaintiff’s FCRA claims even though her credit report stated an account had a
5 “Payment Rating: 6-180 or more days past the due date” because the account was
6 transferred and closed on October 27, 2017, with a \$0 balance and \$0 past due,
7 which, read together, made it implausible to think plaintiff was currently behind on her
8 payments); *Espinoza v. Trans Union*, No. CV-22-01670-PHX-DWL, 2023 WL 6216550,
9 at *2-6 (D. Az. Sept. 25, 2023) (finding credit report was “neither inaccurate nor
10 misleading to a reasonable reader” when plaintiff’s account had a \$0 balance, was last
11 updated on June 9, 2022, was closed on June 9, 2022, and the “Pay Status” of the
12 account was “Paid, Closed; was 60 days past due date”).

13 The Court is particularly persuaded by the district court’s opinion in *Zavala*, in
14 which the court granted judgment on the pleadings in Trans Union’s favor on virtually
15 the same facts as those at issue here. In *Zavala*, the plaintiff alleged that Trans Union
16 reported a closed M&T Bank account as 120-days past due at a time when the same
17 account was reporting with a \$0 balance and was closed in August 2018. 2023 WL
18 6387220, at *1. The court found that the pay status was not inaccurate or misleading
19 because, reading the account information as a whole, the court reasoned that where
20 there are “other clear indicators within the reports that the balance is \$0, the account
21 is closed, and there are no future payments scheduled” then the report does not
22 misleadingly suggest a current late status. *Id.* at *3. In so finding, the *Zavala* court
23 relied on the Third Circuit’s opinion in *Bibbs v. Trans Union, LLC*, which held that credit
24 reports showing a “Past Due” account status are not inaccurate or misleading as a
25 matter of law when the account is reported as “closed” with a \$0 balance. See 43
26 F.4th 331, 345 (3d Cir. 2022).

27 Plaintiff does not argue that Trans Union’s reporting is inaccurate because the
28 Account was not past due when it was closed in 2018. Rather, he argues their

1 reporting is misleading because there is no clear indication in the report that the pay
2 status on the Account is historical, not current. (Opp'n Mot. J. Pleadings (ECF No. 30)
3 at 3-4.) Plaintiff argues it is too early in the litigation to deem whether the pay status is
4 inaccurate or misleading, as reasonable creditors could interpret the report
5 differently, pointing to similar cases where courts have found it premature to make a
6 determination of accuracy based on pleadings alone. (*Id.* at 4-12.)

7 In particular, Plaintiff relies on *Soler v. Trans Union, LLC*, No. CV 20-8459 DSF
8 (PLAx), 2020 WL 7237256 (C.D. Cal. Dec. 1, 2020), where the court denied dismissal
9 of plaintiff's claims under sections 1681(e)(b) and 1681(i) of the FCRA when plaintiff
10 pled her credit report showed closed accounts with a \$0 balance but a pay status of
11 120 days past due, reasoning "there is no definitive statement or guideline on the
12 Credit Report indicating what 'pay status' means," and "[w]ithout Trans Union's
13 annotation, explanation, and supplemental documentation, a jury could find that the
14 Credit Report on its face is misleading in such a way that it adversely affects Soler's
15 credit." *Id.* at *2-3.

16 The Court finds *Soler* unpersuasive, as the *Soler* court did not analyze the
17 plaintiff's credit report as a whole, but rather focused on the meaning of the pay status
18 in isolation. And as Trans Union points out, *Soler* and the other cases cited by Plaintiff
19 largely predate the Third Circuit's decision in *Bibbs*, a fact on which district courts in
20 this circuit, including *Zavala*, have now relied in dismissing similar claims. See, e.g.,
21 *Zavala*, 2023 WL 6387220, at *4; *Espinoza*, 2023 WL 6216550, at *6. Plaintiff attempts
22 to distinguish *Bibbs* in his papers, arguing the account balance in that case was
23 transferred to a different creditor, unlike here where Plaintiff paid off his balance
24 before the Account was closed. Plaintiff further reasons that some courts have
25 observed the "inherent unfairness of an account continuing to report someone as past
26 due when they've actually made the effort to pay off the account." (Opp'n Mot. J.
27 Pleadings at 11.) However, the reasoning in *Bibbs* was subsequently applied by the
28 Third Circuit in *Ostrander v. Trans Union, LLC*, a case where, like here, the balance was

1 paid off at closing rather than being transferred. See No. 20-5227, 2021 WL 3271168
2 (E.D. Pa. July 30, 2021), *aff'd*, No. CV 21-2443 (3d Cir. Jan. 4, 2023) (affirming the
3 district court's holding that reporting a past due status on a paid and closed account
4 with a \$0 balance is neither inaccurate nor misleading as a matter of law). As
5 observed by the court in *Zavala*, "there is no distinction between cases where
6 balances were paid in full versus transferred." 2023 WL 6387220, at *3. The Court
7 finds *Ostrander* and *Zavala* persuasive on this point.

8 Accordingly, the Court holds that Plaintiff has failed to establish there is an
9 inaccuracy in his credit report and will grant judgment in Trans Union's favor.

10 LEAVE TO AMEND

11 Courts have discretion to grant a motion for judgment on the pleadings with
12 leave to amend. *Lonberg*, 300 F. Supp. 2d at 945. Generally, granting leave to
13 amend is proper unless it is clear that "the complaint could not be saved by any
14 amendment." See *Intri-Plex Techs. v. Crest Grp.*, 499 F.3d 1048, 1056 (9th Cir. 2007).

15 Here, the Court finds leave to amend would be futile. Plaintiff has alleged no
16 new facts in his Opposition, nor has he otherwise demonstrated he may be able to
17 plead inaccuracy in Trans Union's reporting. Therefore, the Court declines to grant
18 leave to amend.

19 CONCLUSION

20 For the foregoing reasons, the Court hereby GRANTS Trans Union's Motion for
21 Judgment on the Pleadings (ECF No. 19) without leave to amend. The Clerk of Court
22 is directed to enter judgment in Trans Union's favor.

23 IT IS SO ORDERED.

24 Dated: October 21, 2024

25 
26 Hon. Daniel J. Calabretta
27 UNITED STATES DISTRICT JUDGE
28